

CALIFORNIA COASTAL COMMISSION

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F12b

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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION

Appeal number **A-3-MCO-05-067, Gail and Richard Barrett**

Applicants Gail and Richard Barrett

Appellant Commissioners Shallenberger and Wan

Local government Monterey County

Local decision Resolution 05-216 (PLN040727) Approved with conditions on August 23, 2005

Project location 3154 Seventeen Mile Drive (APN 008-271-004); Pebble Beach, Monterey County.

Project description PLN040727 – Remodel and construction of first and second story additions totaling 1,758 square feet to an existing 4,409 square foot one-story single family dwelling; construction of a new 4,500 square foot gravel driveway. Project also involves development within 100 feet of environmentally sensitive habitat (native Monterey cypress habitat); removal of one 30-inch Monterey cypress tree; and development within 750 feet of known archaeological resources.

File documents Monterey County Certified Local Coastal Program (LCP), including the Del Monte Forest Land Use Plan (LUP) and Coastal Implementation Plan (CIP); Monterey County Coastal Development Permit PLN040727.

Staff recommendation ... **Substantial Issue**

I. Recommended Findings and Declarations for Substantial Issue:

The Monterey County Board of Supervisors approved a Coastal Development Permit for Gail and Richard Barrett (PLN040727) that allows the remodel and new construction of first and second story additions totaling 1,758 square feet to be added to a 4,409 square foot one-story single family dwelling, as well as construction of a new 4,500 square foot circular driveway on the ocean side of 17-Mile Drive in Pebble Beach, Monterey County. The project involves development within 100 feet of environmentally sensitive habitat (i.e., within native Monterey cypress habitat), removal of one 30-inch Monterey cypress tree, and development within 750 feet of known archaeological resources.



California Coastal Commission
October 2005 Meeting in San Diego

Staff: K. Cuffe Approved by:

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The County's approval of this project has been appealed to the Coastal Commission on the basis that: (1) the project is inconsistent with LCP ESHA policies protecting Monterey cypress habitat; (2) the construction of the new 4,500 square foot driveway is inconsistent with LCP general development standards for residential driveways; (3) the project is inconsistent with LCP policies protecting scenic and visual resources in Del Monte Forest and along 17-Mile Drive; and (4) the project is inconsistent with LCP provisions protecting archaeological resources.

Project location maps and plans are attached as Exhibits A-F. Photos of the site are included in Exhibit G. The County's Final Local Action Notice (FLAN), approving the project (Board of Supervisors Resolution Number 05-216), is attached to the report as Exhibit H. The submitted reasons for appeal are attached to this report as Exhibit I. The LCP provisions referenced by this staff report appeal are attached in full as Exhibit J.

The appeal contentions are valid as discussed below, and, thus, the Commission finds that the appeal raises a **substantial issue** regarding the project's conformance to the Monterey County certified LCP for the following reasons:

1. The appeal raises a substantial issue regarding project consistency with LCP ESHA policies protecting Monterey Cypress Habitat.

The project is located within the Monterey Cypress Forest, native only at Point Lobos Reserve State Park and along 17-Mile Drive between Cypress Point and Pescadero Point. The Monterey County LCP notes the rarity of this habitat type and lists the Monterey cypress forest community as environmentally sensitive habitat area (ESHA). Del Monte Forest LUP Figure 2 shows this parcel as being located within areas mapped as environmentally sensitive habitat. LCP policies require that ESHA be protected against any significant disruption of habitat values, that only resource dependant development be allowed in ESHA, and that development adjacent to ESHA be compatible with the long-term maintenance of the resource and be sited and designed to prevent impacts that would significantly degrade the protected habitat (Del Monte Forest LUP Policy #8). Del Monte Forest Policy #21 refers specifically to protecting indigenous Monterey Cypress habitat, and requires that improvements such as structures and driveways be carefully sited and designed to avoid potential damage or degradation of the micro-habitat of these trees (i.e., the area within the perimeter the driplines of the outer-most indigenous Monterey cypress trees on site). Policy #21 prohibits removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering within this environmentally sensitive habitat area, and requires scenic or conservation easements be secured prior to issuance of coastal development permits in order to assure protection of the Monterey cypress habitat. LCP policies also require that in areas near environmentally sensitive habitat areas, removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc) shall be restricted to the minimum amount necessary to accommodate development (Del Monte Forest Policy #14). As part of specific policies for maintaining environmental quality, the Del Monte Forest LUP Policy #75 also requires that within their indigenous range, Monterey cypress trees be protected to "the maximum extent possible."



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As approved by Monterey County, the proposed project conflicts with these policies because it will convert and degrade the environmentally sensitive Monterey cypress forest habitat. The project involves approximately 734 square feet of new building coverage, 457 square feet of new decking/patio space, and approximately 3,022 square feet of new driveway coverage (4,500 sf of new driveway – 1,478 sf of existing driveway). The significant expansion in site coverage from first floor expansion, new decking/patio space, and new driveway area (which combined is over 4,100 square feet) inappropriately encroaches into sensitive Monterey cypress habitat, and thereby raises a substantial issue with Policies #8 and #21. Proposed first floor additions in areas not previously occupied by patio or terrace areas and additional driveway site coverage, while somewhat permeable, will damage the habitat value of the site and surrounding area by reducing the amount of land available for forest regeneration, and by extending the impacts associated with residential development further into the forest (e.g., light, noise, fire clearance needs, etc.). Thus, the appeal raises a substantial issue regarding project consistency with Policy #8. As shown in photographs of the site (Exhibit G). it also appears that the new driveway will be located or at least encroach within the dripline of existing cypress trees, raising a substantial issue with Policy #21

Moreover, since the property already has an existing 4,409 square foot house and 1,478 square foot driveway to the existing home from Scenic Point, construction of the 4,500 square foot circular driveway, which will cover an additional 3,022 square feet of habitat area, raises a substantial issue with LCP policy #14 which requires development in areas adjacent to Monterey cypress ESHA to be restricted to the minimum amount necessary to accommodate development.

Additionally, since the County approval did not require a scenic or conservation easement of the project as a condition of approval, a substantial issue is raised regarding compliance with Del Monte Forest Land Use Plan policies # 21 and #13.

2. The appeal raises a substantial issue regarding project consistency with General Development standards for residential driveways.

The current project site includes an existing 4,409 square foot single-family dwelling with direct driveway access to and from the road that leads to the Cypress Point overlook, which is referred to previously in County staff report as Scenic Point. The County-approved project allows the construction of a new 4,500 square foot circular gravel driveway to provide driveway access from both 17-Mile Drive and Scenic Point. The project essentially lengthens and reroutes the existing driveway, and thus replaces the direct access (with a site coverage of approximately 1,478 sf) with a larger, circular driveway of 4,500 square feet.

General Development Standards of CIP Section 20.147.090.A.1 require that new residential driveways and other road surfaces be designed to be the minimum length and width required to provide simple and direct access, and specifically prohibit circular driveways. Goals of the Land Use and Development Standards of Section 20.14.090 include protecting, maintaining and where feasible, enhancing and restoring the overall quality of the coastal zone environment and its natural and manmade resources. While the driveway in question is proposed to be constructed with gravel rather than impervious



pavement, the increased site coverage of the circular driveway will occupy land otherwise available for Monterey cypress forest regeneration, and thus even if not paved, continual use of the new driveway will degrade the overall quality of the coastal zone environment and the natural resources of the coastal zone environment, in conflict with the basic goals of the development standards, as described under section 20.147.090. While the County has conditioned the width of the driveway to be a maximum of ten feet, it essentially allows a significant expansion of driveway surface and length, and allows a circular driveway in direct conflict with CIP Section 20.147.090.A.1, which requires simple, direct access and specifically prohibits circular driveways.

3. The appeal raises a substantial issue regarding project consistency with LCP policies protecting scenic and visual resources in Del Monte Forest and along 17-Mile Drive.

The project is located along and seaward of 17-Mile Drive, and is within a highly prominent scenic area just south of the Cypress Point Golf Course and immediately inland of the Cypress Point overlook. County findings note that staking and flagging of for the project is visible from 17-Mile Drive, but are inconsistent regarding site visibility from Point Lobos, noting that the project is both visible and not visible from Point Lobos (Finding 2h). Del Monte Forest LUP Figure 2c (Visual Resources Map) shows this parcel as being located within areas visible from 17-Mile Drive and view points. Del Monte Forest LUP Policy #51 requires development within such visually prominent settings to be sited in a manner that maximizes opportunities to screen buildings and access roads from view, and to minimize tree removal and visually obtrusive grading. Policy #55 requires structural setbacks from scenic corridors, such as those along 17-Mile Drive, and requires that development be designed to harmonize with the natural setting and not be visually intrusive, among other ways by minimizing the need for tree removal and alteration of natural landforms. CIP Section 20.147.070.C.6 and C.9 further implement these Land Use policies, by prohibiting development within a 100-foot setback from the centerline of 17-Mile Drive, and requiring that land within the setback be placed in scenic easement. Additionally, Del Monte LUP Policy #36 requires that native trees which are removed shall be replaced on the site at a rate of one tree of the same variety for each tree removed, except where it is demonstrated that this would result in an overcrowded, unhealthy environment.

Contrary to these requirements, the project approved by the County increases the amount of development that will intrude within the significant view corridor by allowing additional development (first and second story additions and new driveway) into the 100-foot setback. While a 6-foot high wooden fence already surrounds the site, second floor additions will be more visible from 17-Mile Drive and so more visually intrusive to views from 17-Mile Drive. Thus it appears that the proposed development has not been designed to maximize screening opportunities, and does not harmonize with the surrounding natural environment. As a result, a substantial issue is raised regarding project consistency with policies #51 and #55.

The project also involves the removal of one Monterey cypress tree. Earlier construction was built around the tree when it was smaller, but the tree has since grown in size (with a consequent increase in trunk diameter, height, and root structure), resulting in potential hazard to the existing structure due to uplifting of the foundation near the base of the tree and proximity to the roof during storm or high wind



events. Del Monte Forest LUP Policy #32 allows removal of indigenous cypress trees in such cases where life, property, or existing access is immediately threatened. Since the project is proposed to redesign the existing house, removing the portion of the structure around this tree should be considered.

If removal of this cypress tree is necessary to avoid immediate hazards to life, property, or access, replacement planting should be provided to help the project maintain the forested character of the site and aid in screening the new additions from view from 17-Mile Drive. County approval of the project does not provide for such planting and therefore raises a substantial issue regarding consistency with Del Monte Forest LUP Policy #36.

4. The appeal raises a substantial issue regarding project consistency with LCP provisions protecting archaeological resources.

The Del Monte Forest Land Use Plan requires new land uses to incorporate site planning and design features necessary to avoid impacts to archaeological resources. On sites where significant archaeological resources are identified, Land Use Plan Policy #62 requires the consideration of all available measures to avoid development on significant prehistoric or historic sites, including open space easements, dedication of scenic easements, and purchase of development rights. When there are such constraints that do not permit avoiding construction on archaeological or other types of cultural sites, Policy #65 requires preservation measures designed by qualified archaeologists.

The preliminary archaeological report prepared for the project (dated September 23, 2004) indicates that a recorded archaeological site is located on the project parcel (as well as on the adjacent Cypress Point golf course) and that areas which would be subject to direct project impacts appear to be located between the more significant midden deposits. The archaeological report also notes that because of the possible presence of buried cultural materials on site, an archaeological monitor should be present during construction activities that may involve earth moving or soil disturbance.

Finding 2(i) of the County's Final Local Action Notice identifies that the site is located in a highly sensitive archaeological area, and states that archaeological reports found several areas of obvious midden deposits on site, but no potentially significant resources were found within the immediate impact area. The County finding notes that areas where new development occurs have been designed around midden areas to avoid potential impacts to cultural resources. However, given that construction activities will require use of heavy equipment, there is not adequate evidence to support the County's finding that such activities will avoid potential impacts to these midden areas, and so the project could have an adverse impact on significant archaeological resources. Furthermore, since the applicants already have access to the site via the existing driveway, the proposed driveway expansion conflicts with the requirements of Land Use Policy #62 to avoid development in sensitive archaeological areas when possible. Since the project proposes a substantial increase in new development that could impact archaeological resources on a site where avoidance is possible, the project raises a substantial issue regarding project consistency with LCP policy #62.

II. Recommended Motion and Resolution



MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-05-067 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-05-067 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Appeal Procedures:

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the first public road and the sea.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water



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located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

